* **HIGH COURT OF DELHI : NEW DELHI**

Date of decision: 31st August 2007

\+ **W.P. (C) No.6376/2007**

% Union of India &Ors. .....Petitioner
Through: Mr. Rajiv Dutta, Sr. Advocate with Mr. Kumar Rajesh Singh, Advocate.

versus

S.P. Gupta ..... Respondent
Through: Ms. Meenu Mainee, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

VIPIN SANGHI, J (Oral)

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1. This petition under Article 226 of the Constitution of India has been filed by the Union of India to challenge the order dated 29th May 2007 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, hereinafter referred to as 'the tribunal' whereby the Tribunal has allowed the Original Application bearing

No.1571/2005 filed by the respond to challenge the orders of penalty passed by the disciplinary authority, the appellate authority and the revisional authority, which eventually resulted in his compulsory retirement from service.

2. The respondent was appointed as a ticket collector in the 1965 with the railways and since 1984 he was working in the promoted post as head TTE. A memorandum dated 23rd of January 1995 was issued to the respondent proposing to hold an enquiry against him under rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The gravamen of the charge against the respondent was that on 21st May 1994, while he was posted and working as TTE and manning the 2 tire AC coach of 3009UP, he was detected to have committed irregularities. It was stated that during the vigilance check one passenger, by the name of Dr P. Singh who was traveling from Bareilly to Dehradun was found to be occupying berth number 41 in the second AC coach. The charge against the respondent was that he had allowed the said passenger to travel in second AC coach without duly regularising the allotment of the said berth to him for, obviously, some consideration.

3. An enquiry was held by the enquiry officer into the charges who held that all the charges against the respondent stood proved. The enquiry report was accepted by the disciplinary authority and an order imposing penalty of removal from service was

passed against the respondent on 28th May 1996. He preferred an appeal which was also rejected on 3rd September 1996. In the revision application preferred by the respondent, the divisional Railway Manager reduced the penalty to compulsory retirement by his order dated the 19th December 1996. That order was subjected to challenge in OA No. 81/1999. The tribunal allowed the said OA on 5th November 2000, on the ground that the penalty order had not been passed by the competent authority.

4. Consequently, the Senior Divisional Commercial Manager, i.e., the Competent Disciplinary Authority passed an order of penalty of removal from service against the respondent vide his order dated 28th December 2001 after giving an opportunity to the respondent to make his representation. The Appellate Authority reduced the penalty to compulsory retirement on the 23rd May, 2002. The respondent thereupon preferred a revision application. Since his revision application was not being decided, the respondent again approached the tribunal by filing OA No.220/2004. It was disposed of with a direction to the revisional authority to decide the revision application. The revisional authority dismissed the revision filed by the respondent on 10th March 2005. Thereupon the respondent again approached the tribunal by filing OA No. 1571/2005 wherein the impugned order has been passed.

5. The tribunal while allowing the aforesaid OA concluded

that the present was a case where there had been a complete negation of the principles of natural justice, and that there was no evidence to support the charges levelled against the respond.

6. The submission of the petitioner before us is that the petitioner had conducted a regular enquiry strictly in accordance with the rules and there was no procedural infirmity in the holding of the enquiry where under the respondent was found guilty of having committed misconduct. The Enquiry Officer, the Disciplinary Authority, the Appellate Authority and the Revisional Authority had all considered the materials and evidence produced before the Enquiry Officer while arriving at their finding of guilt and punishing the respondent. By placing reliance upon the decision of the Hon'ble Supreme Court in ***Apparel Export Promotion Council versus A. K. Chopra*** JT 1999(1) SC 61, the petitioner contended that the Disciplinary Authority is the sole judge of facts and in case an appeal is preferred, the appellate authority has also the power and jurisdiction to appreciate the evidence. The High Court in writ jurisdiction may not normally interfere with those factual findings. The exception to this general rule is where the courts find that the recorded findings were based on "no evidence", or that the findings were wholly perverse, or legally untenable. The adequacy or inadequacy of evidence cannot be canvassed before the court since the court does not sit as an appellate authority over the factual

findings recorded during the departmental proceedings. While exercising its powers of judicial review the court cannot normally substitute its own conclusion with regard to the guilt of the delinquent for that of the departmental authorities.

7. The submission of the Counsel for the petitioner, with regard to the legal position in respect of the scope of judicial review of the disciplinary proceedings is correct, and there can be no quarrel with the same. The court would normally not interfere with the findings of the disciplinary authority in a departmental enquiry unless the same are based on no evidence, or are in violation of the principles of Natural Justice, or are perverse or are otherwise, illegally untenable. Therefore, what has to be seen is, whether in the facts of the present case the tribunal correctly interfered with the disciplinary proceedings on the ground that there was violation of the principles of natural justice and that this was a case of “no evidence” to fix the guilt of the respondent.

8. Having gone through the order of the tribunal as well as the enquiry report wherein the evidence produced before the enquiry officer is also discussed, we are of the view that the tribunal has in the facts of this case correctly come to the conclusion that there was violation of the principles of natural justice and that the present is a case where there was no evidence to fix the guilt of the respondent.

9. The case of the petitioner was that -

(i) upon the vigilance check it was found that Dr P. Singh was occupying berth number 41 of the AC coach under the charge of the respondent on the date of the incident.

(ii) Dr. Singh had disclosed to the Vigilance Team that he had purchased a ticket but wished that his status be upgraded for facilitating his travel in the AC coach.

(iii) For this, he had entrusted the ticket and also the required amount to the coach attendant for upgrading his ticket.

(iv) At the time of interrogation Dr Singh had no ticket with him.

(v) The respondent had stated that he was not aware as to how Dr Singh had come to occupy the seat.

(vi) The coach attendant also admitted that Dr. Singh had given him the money and the ticket and that another conductor had prepared the extra fare ticket but that it was yet to be handed over to Dr Singh.

(vii) These statements were made by the coach attendant in the presence of Dr Singh and the respondent. However, after the respondent departed from the scene, the coach attendant changed his version by stating that the amount had been given by him to the

respondent.

(viii)The Respondent refused to issue a fresh ticket to Dr. Singh despite being asked to do so, on the ground that he had not received the extra fare and the old ticket of Dr. Singh.

10. Pertinently, the coach attendant whose statement was so heavily relied upon by the petitioner in the enquiry, and by the enquiry officer and the other authorities to fix the guilt of the respondent, was not even produced in the course of the enquiry. Merely because he subsequently and behind the back of the respondent stated that he had handed over the additional fare to the respondent, the respondent was found guilty of having accepted the extra fare and yet not issued a receipt for the same, or a fresh ticket to Dr Singh. It is also pertinent to note that in the presence of Dr Singh and the coach attendant when the respondent was asked to issue an extra fare ticket, he refused to comply with the said direction of the vigilance team. Therefore, the respondent from the beginning boldly took the stand that he had not received either the lower class ticket or the money for issuance of a fresh higher class ticket. At that time, the coach attendant never stated or confronted the respondent that he had handed over the lower class ticket and the extra fare to the respondent. This conduct of the respond was, in itself, treated as a misconduct on the assumption that he had in fact received the

lower class ticket along with the additional fare from the coach attendant. Equally important is the fact that another TTE had issued an extra fare ticket, whom the coach attendant had approached for the said purpose. This receipt for the extra fare was duly proved in the enquiry proceedings and the same had been prepared in the normal course of business. There was no suspicious circumstance at all forthcoming to doubt the authenticity of the said document. The said ticket examiner was produced as a defense witness in the enquiry proceedings who stated that he had issued the extra fare ticket when he was approached by the coach attendant for the said purpose. It was also established that the said ticket examiner was authorized to issue the extra fare ticket and that he was also on duty in the same train.

11. In the face of the aforesaid evidence produced in the enquiry, and in the absence of any other material whatsoever to establish the guilt of the respondent, we are of the view that the tribunal was completely justified in concluding that, firstly, there had been violation of the principles of natural justice, inasmuch as, the statement of the coach attendant had been relied upon by the petitioner without producing him as a witness in the course of the enquiry and without providing an opportunity to the respondent to cross-examine him, and secondly the petitioner's had completely ignored the material brought on record by the respondent to

demonstrate that the extra fare ticket had, in fact, been issued by another ticket examiner in respect of the said passenger.

12. We also agree with the tribunal in its observation that at best the respondent could be charged with negligence in the discharge of his duties, inasmuch as, he displayed ignorance of the fact that Dr Singh was traveling in the coach which was under his supervisory control. However, since he was not involved in accepting the old ticket and the extra fare, or in the issuance of the extra fare ticket to Dr Singh, and the extra fare had in fact been deposited in the petitioner's coffers, it could not be said that he was guilty of misconduct. In the circumstances, the punishment of compulsory retirement was too harsh and not called for and was rightly set aside by the tribunal.

13. We also note that the tribunal granted limited relief to the respondent, inasmuch as, all that the tribunal directed was that the pension of the respondent be fixed in a manner, as if he was continuing in service till the date of his attaining the age of superannuation. The respondent was held to be entitled to receive the extra pension from the date of his superannuation. However, he was not reinstated in service from the date of his compulsory retirement and the petitioner was not directed to pay arrears of salary to the respondent till the date of his superannuation.

14. In our view, the tribunal has taken a balanced

approach in the matter and we do not find this to be an appropriate case which calls for interference by us while judicially reviewing the tribunal's order. Accordingly, we dismiss this petition and directed the petitioner to comply with the order of the tribunal, if not already complied with, within two months from today.

VIPIN SANGHI, J.

A.K.SIKRI, J.

August 31, 2007
P.K. BABBAR